



MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC # **086-2016**

LETTER TO COMMISSION

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: March 1, 2016

SUBJECT: **State and County Funding Agreements for the Allen Apartments**

The purpose of this Letter To Commission is to provide you with the rehabilitation funding agreements for the Allen Apartments as requested by Commissioner Kristen Rosen Gonzalez.

The Allen Apartments, a property owned by Miami Beach Community Development Corporation (MBCDC), received funds for the property's rehabilitation from a variety of sources including the City, Miami-Dade County, Florida Housing Finance Corporation and private financing from Great Florida Bank. Attached please find the funding agreements between MBCDC and Florida Housing Finance Corporation and Miami-Dade County as requested.

If you have any questions, please see me.

JLM/KGB/MLR/ARB

CFN 2009R0819779
DR Bk 27082 Pgs 4333 - 4348; (16pgs)
RECORDED 11/16/2009 08:51:28
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

**THIS INSTRUMENT PREPARED BY
AND AFTER RECORDING TO BE
RETURNED TO:**

Junious D. Brown III, Esq.
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308

ABOVE SPACE RESERVED FOR
RECORDING PURPOSES ONLY

LAND USE RESTRICTION AGREEMENT

(The Allen Apartments / EHCL / 2008-002E)

THIS LAND USE RESTRICTION AGREEMENT (this "Agreement") is made and entered into as of November 10, 2009, by and between MBCDC: THE ALLEN, LLC, a Florida limited liability company (hereinafter called the "Borrower"), and the FLORIDA HOUSING FINANCE CORPORATION, a public corporation and a public body corporate and politic duly created and existing under the laws of the State of Florida (hereinafter called "Florida Housing") (which term as used in every instance shall include Florida Housing's successors and assigns).

RECITALS

WHEREAS, Florida Housing was created and organized pursuant to and in accordance with the provisions of the Florida Housing Finance Corporation Act, Chapter 420, Part V, Fla. Stat., as amended (the "Act"), for the purpose among others, of financing residential rental housing projects that will provide decent, safe and sanitary housing for individuals or families of very low, low, moderate or middle income in the State of Florida (the "State"); and

WHEREAS, Borrower has applied to Florida Housing for a loan under the Elderly Housing Community Loan ("EHCL") Program, Section 420.5087, Florida Statutes, and the rules of the Florida Housing Finance Corporation, codified at Chapter 67-32, Florida Administrative Code (the "Rule") (the "EHCL Program" or "Program") thereunder, in the principal amount of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000) (the "Loan") to be used by Borrower for the purpose of providing rehabilitation and/or permanent financing for a 39-unit development known as The Allen Apartments (the "Development") on property located in Miami-Dade County, Florida (the "County") on the real property owned by the Borrower more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Land"); and

WHEREAS, the Borrower has agreed to provide and set aside for a continuous period of thirty (30) years from the date of this Agreement (i) for the first 15 years of the 30-year period, not less than twenty-five percent (25%) of the units (10 units) within the Development shall be

rented to households who shall have a household income less than or equal to thirty-three percent (33%) of the area median gross income for the County or the State or the metropolitan statistical area in which the Development is located, whichever median income is the greatest, adjusted for family size (the "Area Median Income") ("Extremely Low-Income Persons or Households"), and (ii) for the first 15 years of the 30-year period, not less than seventy-five percent (75%) of the units (remaining units) within the Development shall be rented to households who shall have a household income less than or equal to fifty percent (50%) of the Area Median Income ("Very Low-Income Set Asides"), for a total set-aside of one hundred percent (100%) of the units in the Development, and (iii) for the remaining 15 years of the 30-year period, one hundred percent (100%) of the units within the Development shall be rented to households who shall have a household income less than or equal to fifty percent (50%) of the Area Median Income. The units within the Development shall be rented in accordance with the requirements of an Elderly Development (as defined herein).

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Florida Housing and the Borrower do hereby contract and agree as follows:

ARTICLE I

Definitions and Interpretation. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Agreement.

"Act" means the Florida Housing Finance Corporation Act as found in Chapter 420, Part V, of the Florida Statutes.

"Board" means the Board of Directors of Florida Housing.

"Construction Loan Agreement" means the Construction Loan Agreement, of even date herewith, among the Borrower, Florida Housing and the Servicer, as amended and supplemented from time to time.

"County" means Miami-Dade County, Florida.

"Development" means the Improvements to be constructed/rehabilitated on the Land, the residential rental buildings, the Land and all personal property and fixtures from time to time attached thereto.

"Elderly" means persons 62 years of age or older. With respect to the EHCL Program, persons meeting the Federal Fair Housing Act requirements for Elderly shall be considered Elderly.

"Elderly Development" means a development wherein (1) all units are intended for, and solely occupied by, persons 62 years of age or older, or (2) at least eighty percent (80%) of the

units shall be occupied or held available for occupancy by at least one (1) resident that is 55 years of age or older. The Borrower may choose either of the options above at any time to remain in compliance with the Land Use Restriction Agreement and its amendments. For option (2) above, the Development must publish and adhere to policies and procedures that demonstrate its intent to operate as housing for persons 55 years of age or older, in accordance with the factors listed in 24 C.F.R. Part 100.306 and Section 760.29(4)(b), Florida Statutes, and may exclude from occupancy persons 18 years of age or younger from any unit in this circumstance.

"Improvements" means all the work accomplished on the Development associated with the provision of life and safety improvements, including, specifically, (i) conversion of six (6) regular units to three (3) ADA-compliant units, (ii) electrical wiring upgrades, and (iii) replacement of existing elevator.

"Loan" means the mortgage loan in the original principal amount of \$750,000.00 from Florida Housing as lender to the Borrower with respect to the Development to be made in accordance with the Note secured by the Mortgage for the purpose of financing the rehabilitation of the Development.

"Loan Documents" means this Agreement, the Construction Loan Agreement, the Mortgage, the Note, the Completion Guaranty, the Environmental Indemnity Agreement, and all other documents evidencing or securing the Loan.

"Mortgage" shall mean the Mortgage and Security Agreement of even date herewith from the Borrower in favor of Florida Housing granting a mortgage lien on and security interest in Borrower's leasehold estate in the Land, the buildings and equipment constituting the Development and the rents and income therefrom and securing the obligation of the Borrower under the Construction Loan Agreement and the Note, as amended and supplemented from time to time.

"Note" means the Promissory Note of even date herewith in the original principal amount of \$750,000.00 with the Borrower as payor and Florida Housing as payee thereunder, evidencing the Loan to the Borrower pursuant to the Construction Loan Agreement and the Mortgage, as may be amended or supplemented from time to time.

"Servicer" means First Housing Development Corporation of Florida, a Florida corporation.

"State" shall mean the State of Florida.

"Superior Mortgage" means, collectively, the following loan(s) (if any) evidenced and secured by mortgage loan documents made by a lender (each a "Superior Mortgagee") to finance a portion of the costs of the improvements which loan(s) is secured by a lien superior to the Mortgage:

GREAT FLORIDA BANK is the holder of that certain Mortgage, Assignment of Rents and Security Agreement dated as of September 15, 2008, from Borrower to Great Florida Bank,

recorded in Official Records Book 26572, Page 458, of the Public Records of Miami-Dade County, Florida, as amended by that certain Mortgage Modification Agreement dated as of March 15, 2009, between Borrower and Great Florida Bank, securing a first mortgage loan in the original principal amount of \$500,000, to be reduced to \$263,300 using \$236,700 of Loan proceeds at the time of completion of rehabilitation, and the MIAMI BEACH REDEVELOPMENT AGENCY is the holder of that certain Declaration of Restrictive Covenants dated as of April 30, 2007 made by Borrower and securing a second mortgage loan in the original principal amount of \$3,469,347.50, as increased to the principal amount of \$3,565,672.

"Term of this Agreement" means the term determined pursuant to Article VIII hereof.

"Very Low-Income Persons or Households" means one or more natural persons or a family, not including students, who (a) if residing in a development using tax-exempt bond financing for the first mortgage, have incomes which meet the income eligibility requirements of Section 8 of the United States Housing Act of 1937, as amended; or (b) if residing in a development using taxable financing for the first mortgage, have total annual gross household income which does not exceed 50 percent (50%) of the median income adjusted for family size or 50 percent (50%) of the median income adjusted for family size for households within the metropolitan statistical area (MSA), or, if not within an MSA, within the county in which the person or family resides, or within the State of Florida, whichever is greater, or (c) if residing in a Development using the federal Low Income Housing Tax Credit, have incomes which meet the income eligibility requirements of Section 42 of the Internal Revenue Code of 1986, as amended.

ARTICLE II

Affordable Housing for Elderly Persons. Florida Housing and the Borrower hereby declare their understanding and intent that, during the Term of this Agreement, the Development is to be owned, managed and operated according to the terms and conditions of the Act, the Program thereunder, this Agreement and all Loan Documents. To that end, the Borrower hereby represents, covenants and agrees as follows:

2.1. That the Development is being constructed or substantially rehabilitated for the purpose of providing rental housing, and the Borrower, its successors or assigns, shall own, manage, and operate the Development exclusively as multifamily rental housing;

2.2 That under this Agreement, for a period of not less than thirty (30) years from the date of this Agreement, the units shall be set-aside as follows:

- (a) (i) For the first 15 years of the 30-year period, not less than twenty-five percent (25%) of the units (10 units) within the Development shall be rented to households who shall have a household income less than or equal to thirty-three percent (33%) of the Area Median Income, and

- (ii) for the first 15 years of the 30-year period, not less than seventy-five percent (75%) of the units (remaining units) within the Development shall be rented to households who shall have a household income less than or equal to fifty percent (50%) of the Area Median Income ("Very Low-Income Set Asides"), for a total set-aside of one hundred percent (100%) of the units in the Development.
- (iii) For the remaining 15 years of the 30-year period, one hundred percent (100%) of the units within the Development shall be rented to households who shall have a household income less than or equal to fifty percent (50%) of the Area Median Income.

(b) The units within the Development shall be rented in accordance with the requirements of an Elderly Development.

Should the Development cease to meet the requirements in this Section 2.2, the Loan shall become due and payable at the option of Florida Housing.

2.3. That the Development shall be rehabilitated, operated and maintained in accordance with the requirements of an Elderly Development;

2.4. That during the Term of this Agreement the Borrower will not convert the Development to condominium or co-operative ownership;

2.5. That the Borrower shall not discriminate on the basis of race, religion, color, sex, familial status, national origin or disability in the lease, use or occupancy of the Development. Age discrimination and discrimination against minor dependents, except when units are specifically being held for the Elderly, are also not permitted;

2.6. That the Borrower will immediately withdraw from circulation any advertisement determined by Florida Housing to violate or be inconsistent with its policies, with respect to promoting rental housing for Elderly persons, and consents to the remedy of specific performance;

2.7. That the Development as of the date hereof is located entirely within the limits of the County.

The provisions of this Article II shall run with the Land and shall remain in effect during the Term of this Agreement; provided, however, the Borrower may be discharged from its obligations under Articles II and III hereof to the extent that the same are assumed by any successor in interest to the Borrower pursuant to Article VII hereof.

ARTICLE III

Compliance With Program Requirements. In order to comply with the Act and Florida Housing's rules and regulations thereunder and with Chapter 67-32, the Borrower hereby covenants and agrees that, during the Term of this Agreement:

3.1. The units in the Development shall be set aside as provided in Paragraph 2.2 of this Agreement.

3.2. The Borrower and its successors in interest shall at all times operate the Development in conformity with all federal, state and local laws, rules, regulations, ordinances and orders which may be applicable to the Development, including but not limited to HUD's rules and regulations, the Federal Fair Housing Act as implemented by 24 C.F.R. Part 100, and Titles II and III of the Americans With Disabilities Act of 1990 as implemented by 28 C.F.R. Part 35, and the Florida Americans With Disabilities Accessibility Implementation Act, as amended.

3.3. The Borrower shall annually certify to Florida Housing (to the attention of the Multifamily Loans Administrator):

(a) using the certification form attached hereto as Exhibit "B", no later than the twenty-fifth (25th) day of the month following the end of the Development's fiscal year, the following:

(i) that all terms and conditions set forth in this Agreement, the Construction Loan Agreement, and the Mortgage have been satisfied; and

(ii) that all taxes and insurance premiums that came due have been paid; and

(iii) that all replacement reserve funds required by the Mortgage and the Construction Loan Agreement have been retained.

ARTICLE IV

Indemnification. The Borrower hereby covenants and agrees that it shall indemnify, hold harmless and defend Florida Housing and its directors, officers, members, officials, employees and agents from and against (i) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Loan Documents or the Development, or arising out of the construction/rehabilitation, operation and/or management of the Development or the granting of the Loan to the Borrower; and (ii) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon as such fees, costs, expenses or liabilities become due. In the event that any action or proceeding is brought against Florida Housing, or any of its directors, officers, members, officials, employees, or agents with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the indemnified party, shall

assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. This provision shall survive the termination of this Agreement. The indemnified party shall have the right to participate in the investigation and defense thereof and may employ separate counsel with or without the approval and consent of the Borrower.

ARTICLE V

Consideration. In addition to other purposes, Florida Housing has authorized and made the Loan to the Borrower as an inducement to the Borrower to operate the Development as set forth in Paragraph 2.2. of this Agreement. In consideration of the issuance of the Loan by Florida Housing for the foregoing purposes, Florida Housing and the Borrower have entered into this Agreement.

ARTICLE VI

Reliance. In performing its duties hereunder, Florida Housing may rely upon statements and certificates of the Borrower, and tenants of the Development believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Development. In addition, Florida Housing may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by Florida Housing in good faith and in conformity with the opinion of such counsel. The Borrower may rely upon certificates of tenants of the Development reasonably believed to be genuine and to have been executed by the proper person or persons.

ARTICLE VII

Sale, Transfer or Refinancing of Development. The Loan, as to both principal and interest, together with all other obligations under the Loan Documents, shall be assumable upon sale, transfer or refinancing of the Development if the following conditions.

7.1. The proposed owner of the Development meets or satisfies the eligibility requirements imposed by the Request for Proposals;

7.2. The proposed owner of the Development agrees to maintain all set asides and other requirements of the Loan for the period originally specified or longer, and agrees to assume the Borrower's obligations under this Agreement and the Loan Documents; and

7.3. The proposed owner receives a favorable recommendation from Florida Housing's credit underwriter and approval by the Board of Directors of Florida Housing.

In the event the above-stated conditions are not met, the Loan as to both principal and interest, as well as all other obligations due or accrued under the Loan Documents, shall be due in full upon the sale, transfer or refinancing of the Development unless the consent of Florida Housing shall have been obtained or the transfer is otherwise permitted under the Loan Documents.

ARTICLE VIII

Term. This Agreement shall become effective upon its execution and delivery and shall remain in full force and effect for thirty (30) years from the date of this Agreement, unless earlier terminated pursuant to Article XII.

ARTICLE IX

Damage, Destruction or Condemnation of the Development. In the event that the Development is damaged or destroyed or title to the Development, or any part thereof, is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, (subject to the rights of the Superior Mortgagee, if any, and the provisions of the Superior Mortgage, if any, regarding same), the Borrower shall deposit with Florida Housing any insurance proceeds or any condemnation award, and shall promptly commence to rebuild, replace, repair or restore the Development in such manner as is consistent with the Loan Documents. Florida Housing shall make any such insurance proceeds or condemnation award moneys available to provide funds for such restoration work. In the event that the Borrower fails to commence or to complete the rebuilding, repair, replacement or restoration of the Development after notice from Florida Housing, Florida Housing shall have the right, in addition to any other remedies granted in the Loan Documents or at law or in equity, to repair, restore, rebuild or replace the Development so as to prevent the occurrence of a default hereunder.

ARTICLE X

Enforcement. If the Borrower defaults (by its action or inaction) in the performance of its obligations under this Agreement or breaches any covenant, agreement or warranty of the Borrower set forth in this Agreement, and if such default remains uncured for a period of thirty (30) days after notice thereof shall have been given by Florida Housing to the Borrower (or for an extended period approved by Florida Housing if such default stated in such notice can be corrected, but not within such thirty (30) day period, and if the Borrower commences such correction within such thirty (30) day period, and thereafter diligently pursues the same to completion within such extended period), then Florida Housing may terminate all rights of the Borrower under this Agreement and may take any other action at law or in equity or otherwise, whether for specific performance of any covenant in this Agreement or such other remedy as may be deemed most effectual by Florida Housing to enforce the obligations of the Borrower with respect to the Development. If a default by the Borrower under this Agreement is not cured within a reasonable time, Florida Housing shall institute foreclosure proceedings against the Development, but only as provided in the Mortgage.

Notwithstanding any of the foregoing, Florida Housing will have the right to seek specific performance of any of the covenants and requirements of this Agreement concerning the construction and operation of the Development.

ARTICLE XI

Recording and Filing; Covenants to Run with the Land.

11.1. Upon execution and delivery by the parties hereto, the Borrower shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the Official Public Records of the County and in such manner and in such other places as Florida Housing may reasonably request, and shall pay all fees and charges incurred in connection therewith.

11.2. This Agreement and the covenants contained herein shall run with the land and shall bind, and the benefits shall inure to, respectively, the Borrower and Florida Housing and their respective successors and assigns during the Term of this Agreement.

ARTICLE XII

Subordination and Foreclosure. In the event of a foreclosure and sale of the Land or receipt of a deed in lieu of foreclosure pursuant to a default under the Superior Mortgage, if any, related to the Development, this Agreement shall be null and void and of no further force and effect, provided, however, that if a "Related Party" to the Borrower as defined in the Internal Revenue Code should purchase the Development following a foreclosure or a deed in lieu of foreclosure, the use restrictions shall be reinstated as of the date of transfer to any such Related Party.

ARTICLE XIII

Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, both substantive and governing remedies.

ARTICLE XIV

Notice and Effect. All notices and other communications to be made or permitted to be made hereunder shall be in writing and shall be delivered to the addresses shown below or to such other addresses that the parties may provide to one another in accordance herewith. Such notices and other communications shall be given by any of the following means: (a) personal service; (b) national express air courier, provided such courier maintains written verification of actual delivery; or (c) facsimile. Any notice or other communication given by the means described in subsection (a) or (b) above shall be deemed effective upon the date of receipt or the date of refusal to accept delivery by the party to whom such notice or other communication has been sent. Any notice or other communication given by the means described in subsection (c) above shall be deemed effective the date on which the facsimile transmission occurs or if such date is not a business day on the business day immediately following the date on which the facsimile transmission occurs.

Florida Housing: Florida Housing Finance Corporation
227 North Bronough Street, Suite 5000
Tallahassee, Florida 32301-1329
Attention: Executive Director
Telephone No.: (850) 488-4197
Fax No.: (850) 488-9809

with a copy to: Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
Attention: Junious Brown, Esquire
Telephone No.: (850) 222-4070
Fax No.: (850) 222-2198

Borrower: MBCDC: The Allen, LLC
2001 Washington Avenue
Miami, Florida 33139
Attention: Karl Kennedy
Telephone No.: (305) 538-0090
Fax No.: (305) 538-2863

with a copy to: Shutts & Bowen LLP
1500 Miami Center
201 S. Biscayne Boulevard
Miami, Florida 33131
Attention: Robert Cheng, Esq.
Phone: (305) 358-6300
Fax: (305) 381-9982

Servicer: First Housing Development Corporation of Florida
1715 N. Westshore Boulevard, Suite 700
Tampa, Florida 33607
Attention: Ed Busansky
Telephone No.: (813) 289-9410
Fax No.: (813) 289-5580

Any addressee may change its address by giving the other parties hereto notice of such change of address in accordance with the foregoing provisions.

ARTICLE XV

Miscellaneous.

15.1. Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

15.2. The terms and phrases used in the recitals of this Agreement have been included for convenience of reference only and the meaning, construction and interpretation of all such terms and phrases for purposes of this Agreement shall be determined by references to Article I of this Agreement. The titles and headings of the sections of this Agreement have been inserted

for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any questions of intent shall arise.

15.3. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

15.4. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

15.5. The provisions of Section 5.5 of the Mortgage are incorporated herein by this reference.

[COUNTERPART SIGNATURE PAGES TO FOLLOW]

**COUNTERPART SIGNATURE PAGE FOR
LAND USE RESTRICTION AGREEMENT**

(The Allen Apartments / EHCL / 2008-002E)

IN WITNESS WHEREOF, Florida Housing and the Borrower have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the date first set forth above.

ATTEST:

MBCDC: THE ALLEN, LLC, a Florida limited liability company

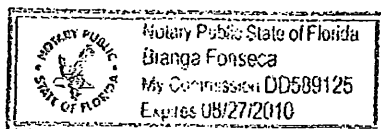
By: Miami Beach Community Development Corporation, a Florida not-for-profit corporation, its sole member / manager

By: [Signature]
Name: Ivette Breda
Title: Housing Officer

By: [Signature]
Roberto Datorre, President

STATE OF FLORIDA
COUNTY OF Dade

The foregoing instrument was acknowledged before me this 22 day of October, 2009, by ROBERTO DATORRE, as President of the MIAMI BEACH COMMUNITY DEVELOPMENT CORPORATION, a Florida not-for-profit corporation, the sole member and managing member of MBCDC: THE ALLEN, LLC, a Florida limited liability company, on behalf of the not-for-profit corporation and the limited liability company. Said person is personally known to me or has produced a valid driver's license as identification.



[Signature]
Notary Public, State of Florida
Print Name: Branga Fonseca
My Commission Expires: 8-27-2010
My Commission No.: DD589125

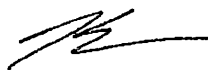
**COUNTERPART SIGNATURE PAGE FOR
LAND USE RESTRICTION AGREEMENT**

(The Allen Apartments / EHCL / 2008-002E)

IN WITNESS WHEREOF, Florida Housing and the Borrower have caused this Agreement to be executed and delivered on their behalf by their duly authorized representatives as of the date first set forth above.


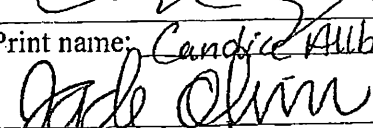
FLORIDA HOUSING:

**FLORIDA HOUSING FINANCE
CORPORATION**

By: 

Kevin L. Tatreau
Director of Multifamily Development
Programs

WITNESSES:


Print name: Candice Allbaugh

Print name: Jade Oliver

**STATE OF FLORIDA
COUNTY OF LEON**

The foregoing instrument was acknowledged before me on this 23rd day of October, 2009, by Kevin L. Tatreau, as Director of Multifamily Development Programs of FLORIDA HOUSING FINANCE CORPORATION, on behalf of said corporation. Such person is personally known to me or has produced a valid driver's license as identification.



JADE M. OLIVER
Commission DD 621850
Expires December 12, 2010
Bonded thru Troy Fahn Insurance 609-635-7019

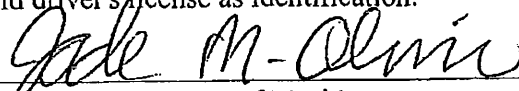

Notary Public, State of Florida
Print Name: _____
My Commission Expires: _____
My Commission No.: _____

EXHIBIT "A"

Legal Description

Commencing at the NE corner of Block G as shown on the Plat of the resubdivision of Blocks G, H, J and Triangular Tract as recorded in Plat Book 6, at Page 102, of the Public Records of Dade County, Florida, thence run Northwesterly along the Southerly line of 21st street 225 feet to a point; thence run in a Southwesterly direction along a line parallel to an 225 feet distant Westerly from the Westerly line of Sheridan (now Park) Avenue 124.91 feet at the point of beginning of the Tract of land herein described; thence continue along the last mentioned course a distance of 124.91 feet to the Northerly line of 20 street; thence run a Northwesterly direction along the Northerly line of 20th Street a distance of 31.29 feet of the point of curvature, P.C. of a circular curve; thence run along the arc of a circular curve deflecting to the right and having for its elements a central angle of 68.04 degrees and a radius of 30 feet a distance of 35.64 feet to the point of tangency P.T. of said circular curve, said P.T. being on the Easterly line of Washington Avenue; thence run tangent to the last mentioned circular curve along the Easterly line of Washington Avenue a distance of 114.4 feet to a point; thence run in a Southeasterly direction along a line parallel to and 124.91 feet distant Northerly from the Northerly line of 20th Street a distance of 101.85 feet to the point of beginning of the tract of land herein described.

EXHIBIT "B"

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Re: THE ALLEN APARTMENTS / EHCL / 2008-002E

The undersigned Authorized Borrower Representative of and on behalf of MBCDC: THE ALLEN LLC, a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Borrower"), has read and is thoroughly familiar with the provisions of the various loan documents associated with the making of a loan by FLORIDA HOUSING FINANCE CORPORATION ("Florida Housing") to Borrower for the rehabilitation of The Allen Apartments, in the principal amount of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000) (the "Loan"), such documents including:

1. The Land Use Restriction Agreement, dated as of November 10, 2009, by and between the Borrower and Florida Housing;
2. The Mortgage and Security Agreement, dated as of November 10, 2009, from the Borrower to Florida Housing; and
3. The Construction Loan Agreement, dated as of November 10, 2009, by and among the Borrower, Florida Housing and First Housing Development Corporation of Florida (the "Servicer").

The undersigned hereby certifies that the Borrower is in full compliance with the following requirements and is not in default under any of the following, except as set forth below:

- (i) that all terms and conditions set forth in the Land Use Restriction Agreement, the Construction Loan Agreement and the Mortgage and Security Agreement have been satisfied;
- (ii) that all taxes and insurance premiums that came due have been paid by the Borrower (and attached to this certificate are receipts evidencing such payments); and
- (iii) that all replacement reserve funds required by the Mortgage and Security Agreement and by the Construction Loan Agreement have been retained by the Borrower and reserved in a segregated bank account designated for such funds. Attached to this certificate is a copy of the current bank statement for the account (dated within 30 days of the date hereof) as evidence thereof.

The undersigned certifies that the Borrower is in default under the following documents:
(if none, please so state): _____

Date: 10.22.09

MBCDC: THE ALLEN, LLC, a Florida limited
liability company

By: Miami Beach Community Development
Corporation, a Florida not-for-profit
corporation, its sole member / manger

By:  _____
Roberto Datorre, President



CFN 2011R0668005
DR Bk 27848 Pgs 4269 - 4277 (9pgs)
RECORDED 10/05/2011 12:22:13
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

This Instrument Was Prepared By:
Brenda Kuhns Neuman, Esq.

Record and Return to:
Miami-Dade County
Department of Housing and Community Development
Overtown Transit Village North
701 NW 1st Court, 14th Floor
Miami, Florida 33136
Attention: Cynthia Brannon

MIAMI-DADE COUNTY
RENTAL REGULATORY AGREEMENT

WHEREAS, pursuant to Resolution No. R-1071-09 adopted by the Miami-Dade County Board of County Commissioners, on September 1, 2009, MIAMI-DADE COUNTY (hereinafter referred to as the "County" or "DHCD") is authorized to loan FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$500,000.00), of SURTAX funds, or funding source that the County in its sole discretion shall determine, (hereafter referred to as the "County Loan") to MBCDC: THE ALLEN, LLC, a Florida limited liability company, its heirs, successors and assigns (hereinafter referred to as the "Owner") for the purposes outlined and pursuant to the conditions set forth in the Promissory Note, Mortgage and Security Agreement, Assignment of Leases, Rents and Profits, the Loan Agreement, and the 2010 Surtax Agreement between the County and the Owner and the Note in favor of the County executed simultaneously with this Rental Regulatory Agreement (the "Agreement") (hereinafter referred to as "Loan Documents"); and

WHEREAS, in connection with receipt of the County Loan, the Owner agrees to maintain the rents at certain prescribed rates, as set forth in this Agreement; and

NOW, THEREFORE, for and in consideration of Ten dollars (\$10.00), the promises and covenants contained in this Agreement and for other good and valuable consideration received and acknowledged this 15th day of SEPTEMBER, 2011, the Owner, whose address is 945 Pennsylvania Avenue, Miami Beach, Florida 33139, its successors and assigns, and Miami-Dade County, a political subdivision of the State of Florida (the "County") having a principal address of 111 NW First Street, Miami, Fl. 33128, Attn: County Mayor, through its Department of Housing and Community Development (DHCD) hereby agree as follows:

PROPERTY ADDRESS: 2001 Washington Avenue
Miami Beach, Fl. 33139

**LEGAL DESCRIPTION
OF PROPERTY:**

The real property legally described and attached hereto in Exhibit A and located in Miami-Dade County (hereinafter referred to as the "Property")

DWELLING UNITS: 39 units

WITNESSETH:

- I. Owner agrees with respect to the Property for the period beginning on the date of recordation of the Loan Documents, and ending on the last day of the thirtieth (30th) year after the year in which the Project is completed, that:
- a) Ten (10) of the units must have rents for very-low income families (33 % of area median income), twenty-eight (28) units for low or moderate income families (60% of the area median income) and one (1) unit for low or moderate income families (50% of the area median income) adjusted for family size, minus tenant-paid utilities. Accordingly, the maximum initial approved rental rates for this property are indicated in Exhibit B attached hereto. In the case of Section 8 units, the HUD approved contract rent is allowed.
 - b) This Agreement shall be a recorded restrictive covenant on the Property, and all buildings and other improvements constructed or to be constructed thereon (collectively, the "Project"). The subject matter of this Agreement and the covenants set forth herein touch and concern the Property. It is the intent of the parties that this Agreement and the covenants set forth herein run with the Property. This Agreement shall be binding on the Property, the Project, and all portions thereof, and upon any purchaser, grantee, transferee, owner or lessee or any portion thereof, and on the heirs, executors, administrators, devisees, successors and assigns of any purchaser, grantee, owner or lessee and on any other person or entity having any right, title or interest in the Property, the Project, or any portion thereof, for the length of time that this Agreement shall be in force. Owner hereby makes and declares these restrictive covenants which shall run with the title to said Property and be binding on the Owner and its successors in interest, if any, for the period stated in the preamble above, without regard to payment or satisfaction of any debt owed by Owner to the County or the expiration of any Contract between the Owner and the County.
 - c) The above rentals will include the following services to each unit: refrigerator, small range/oven, wood cabinets, new through-wall HVAC air conditioning, one bathroom with typical plumbing fixtures including a sink with small vanity, tub/shower and toilet. Five of the room will solely include shower and will be ADA accessible, window treatments, cable or satellite TV hook-up, window sills, steel exterior entry door frames, double compartment kitchen sink, vinyl tile in kitchen, new bathroom cabinets, new plumbing fixtures in the kitchen and bathroom , ceramic tile in bathrooms and ceiling fans. Owner will be responsible for trash pick-up.
 - d) Owner agrees that upon any violation of the provisions of this agreement, the County, through its agent, DHCD may give written notice thereof to the Owner, by registered mail, at the address stated in this agreement, or such other address or addresses as may subsequently be designated by the Owner in writing to DHCD, and in the event Owner does not cure such default (or take measures reasonably

satisfactory to DHCD to cure such default), within thirty (30) days after the date of notice, or within such further time as DHCD may determine is necessary for correction, DHCD may, without further notice, declare a default under the Mortgage and/or this Agreement, and effective upon the date of such default, DHCD may:

- i) Declare the whole indebtedness under the Note evidencing the Loan immediately due and payable and then proceed with foreclosure of the Mortgage;
- ii) Apply to any court, County, State or Federal, for any specific performance of this agreement; for an injunction against the violation of this agreement; or for such relief as may be appropriate since the injury to DHCD arising from a default remaining uncured under any of the terms of this agreement would be irreparable, and the amount of damage would be difficult to ascertain.

Notwithstanding the foregoing, the County hereby agrees that any cure of any default made or tendered by the Owner's managing member, Miami Beach Community Development Corporation, Inc., shall be deemed to be a cure by Owner and shall be accepted or rejected on the same basis as if made or tendered by Owner. Copies of all notices which are sent to Owner under the terms of this Agreement shall also be sent to Miami Beach Community Development Corporation, Inc., 945 Pennsylvania Avenue, Miami Beach, Florida 33139.

- e) Owner further agrees that it will, during the term of this Agreement: furnish each resident at the time of initial occupancy, a written notice that the rents to be charged for the purposes and services included in the rents are approved by the County pursuant to this Agreement; that they will maintain a file copy of such notice with a signed acknowledgment of receipt by each resident; and, that such notices will be made available for inspection by the County during regular business hours.
 - f) Owner agrees that the unit shall meet the energy efficiency standards promulgated by the Secretary of the United States Department of Housing and Urban Development (hereafter "HUD"), the Florida Housing Finance Corporation (hereafter "FHFC"), and/or Miami-Dade County, as applicable.
- II. DHCD and Owner agree that rents may increase as median income increases as published by HUD. Any other adjustments to rents will be made only if DHCD (and HUD if applicable), in their sole and absolute discretion, find any adjustments necessary to support the continued financial viability of the project and only by an amount that DHCD (and HUD if applicable) determine is necessary to maintain continued financial viability of the project.

Owner will provide documentation to justify a rental increase request not attributable to increases in median income. Within thirty (30) days of receipt of such documentation,

DHCD will approve or deny, as the case may be, in its sole and absolute discretion, all or a portion of the rental increase in excess of the amount that is directly proportional to the most recent increase in Median Annual Income. In no event, however, will any increase directly proportional to an increase in Median Annual Income be denied.

- III. Except as otherwise noted, all parties expressly acknowledge that DHCD shall perform all actions required to be taken by Miami-Dade County pursuant to Paragraphs 4, 5, 6 and 7, hereof for the purpose of monitoring and implementing all the actions required under this Agreement. In addition, thirty (30) days prior to the effective date of any rental increase, the Owner shall furnish DHCD with notification provided to tenants advising them of the increase.

IV. Occupancy Reports.

The Owner shall, on an annual basis, furnish DHCD with an occupancy report, which provides the following information:

- A) List of all occupied apartments, Indicating composition of each resident family, as of the end date of the reporting period. Composition includes, but is not limited to:
1. Number of residents per units.
 2. Area median Income (AMI) per unit.
 3. Race, Ethnicity and age per unit (Head of Household).
 4. Number of units serving special need clients.
 5. Gross Household Rent
 6. Maximum rent per unit.
- B) A list of all vacant apartments, as of the end date of the reporting period.
- C) The total number of vacancies that occurred during the reporting period.
- D) The total number of units that were re-rented during the reporting period, stating family size and income.
- E) The Owner shall upon written request of DHCD allow representatives of DHCD to review and copy any and all of its executed leases with tenant residing on the Property.

V. Inspections

Pursuant to 42 U.S.C. § 12755, the Owner shall maintain the Property in compliance with all applicable federal housing quality standards, receipt of which is acknowledged by the Owner, and contained in Sec. 17-1, et seq., Code of Miami-Dade County, pertaining to minimum housing standards (collectively, "Housing Standards").

- A) DHCD shall annually inspect the Property, including all dwelling units and common areas, to determine if the Property is being maintained in compliance with federal Housing Quality Standards and any applicable Dade County Minimum Housing Codes. The Owner will be furnished a copy of the results of the inspection within thirty (30) days, and will be given thirty (30) days from receipt to correct any deficiencies or violations of the property standards of the Dade County Minimum Housing Codes or Housing Standards.
- B) At other times, at the request of the Owner or of any tenant, DHCD may inspect any unit for violations to the property standards of any applicable Dade County Minimum Housing Codes or Housing Standards. The tenant and the Owner will be provided with the results of the inspection and the time and method of compliance and corrective action that must be taken.
- C) The dwelling units shall contain at least one bedroom of appropriate size for each two Persons.

VI. Lease Agreement, Selection Policy and Management Plan

Prior to initial rent-up and occupancy, the Owner will submit the following documents to DHCD:

- A) Proposed form of resident application.
- B) Proposed form of occupancy agreement.
- C) Applicant screening and tenant selection policies.
- D) Maintenance and management plan which shall include the following information:
 - 1. A schedule for the performance of routine maintenance such as up-keep of common areas, extermination services, etc.
 - 2. A schedule for the performance of non-routine maintenance such as painting and reconditioning of dwelling units, painting of building exteriors, etc.
 - 3. A list of equipment to be provided in each dwelling unit.
 - 4. A proposed schedule for replacement of dwelling equipment.

5. A list of tenant services, if any, to be provided to residents.

The Owner agrees that the County has the right to refer eligible applicants for housing. The Owner shall not deny housing opportunities to eligible, qualified families, including those with Section 8 Housing Choice Vouchers, unless the Owner is able to demonstrate a good cause basis for denying the housing as determined by DHCD in its sole and absolute discretion

VII. Financial Reports

A) Annually, the Owner shall transmit to the County a certified annual operating statement showing project income, expenses, assets, liabilities, contracts, mortgage payments and deposits to any required reserve accounts (the "Operating Statement").

DHCD will review the Operating statement to insure conformance with all provisions contained in this Agreement.

B) The Owner will create a reserve for maintenance to be funded \$300.00 per unit per year. This reserve may be combined with reserve accounts required by any other parties making loans to Owner and will be deemed satisfied by any deposits made by Owner in accordance with loan documents \$300.00 per unit per year.

VIII. Action By or Notice to the County

Unless specifically provided otherwise herein, any action to be taken by, approvals made by, or notices to or received by the County required by this Agreement shall be taken, made by, given or delivered to:

Department of Housing and Community Development
701 N. W. 1 Court
14th Floor
Miami, Florida 33136
Attn: Director

Copy to:

Miami-Dade County Attorney's Office
111 N.W. 1 Street
Suite 2810
Miami, Florida 33128

or any of their successor agencies or departments.

IX. Recourse:

In the event of a default by the Owner under this Agreement, Lender shall have all remedies available to it at law and equity.

IN WITNESS WHEREOF, County and Owner have caused this Agreement to be executed on the date first above written.

OWNER:

MBCDC: The Allen LLC

a Florida limited liability company

By: Miami Beach Community Development, Inc.
its managing member

By: _____

Roberto Datorre, President

STATE OF FLORIDA)

COUNTY OF MIAMI-DADE)

The foregoing Rental Regulatory Agreement was sworn to, subscribed and acknowledged before me this 5th day of Sept, 2011, by Roberto Datorre, President of Miami Beach Community Development Corporation Inc., a Florida not-for-profit corporation as managing member of MBCDC: The Allen, LLC, a Florida limited liability company, on behalf of and as an act of that limited liability company. He is personally known to me _____ or has produced satisfactory identification _____.



Notary Public

State of Florida at Large

MIAMI-DADE COUNTY, FLORIDA

By: _____

CARLOS A. GIMENEZ
COUNTY MAYOR

ATTEST:

HARVEY RUVIN, CLERK

By: _____

DEPUTY CLERK

CD

EXHIBIT "A"

LEGAL DESCRIPTION

Commencing at the NE corner of Block G as shown on the Plat of the resubdivision of Blocks G, H, J and Triangular Tract as recorded in Plat Book 6, Page 102, of the Public Records of Dade County, Florida, run Northwesterly along the Southerly line of 21st street 225 feet to a point; thence run in a Southwesterly direction along a line parallel to an 225 feet distant Westerly from the Westerly line of Sheridan (now park) Avenue 124.91 feet at the point of beginning of the Tract of land herein described; thence continue along the last mentioned course a distance of 124.91 feet to the Northerly line of 20 street; thence run a Northwesterly direction along the Northerly line of 20th Street a distance of 3129 feet of the point of curvature, P.C. of a circular curve; thence run along the arc of a circular curve deflecting to the right and having for its elements a central angle of 68.04 degrees and a radius of 30 feet a distance of 35.64 feet to the point of tangency P.T. of said circular curve, said P.T. being on the Easterly line of Washington Avenue; thence run tangent to the last mentioned circular curve along the Easterly line of Washington Avenue a distance of 114.4 feet to a point; thence run in a Southeasterly direction along a line parallel to and 124.91 feet distant Northerly from the Northerly line of 20th Street a distance of 101.85 feet to the point of beginning of the tract of land herein described.

EXHIBIT B

Rents:

Number of Units	Type	Gross Rent	Utility	Net Rent
26	Studio/1 bath	\$616	57	\$559
10	Studio/ 1 bath	\$406	57	\$349
2	1bedroom/1 bath	\$660	69	\$591
1	1bedroom/1 bath	\$660	69	\$591

At the discretion of the County, up to twenty percent (20%) of the rental units, per project, may be designated for Housing Choice Voucher (Section 8) subsidy, either project-based or tenant-based. The Owner shall not deny housing opportunities to eligible, qualified Housing Choice Voucher (Section 8) applicants referred by the County, unless good cause is documented by the Owner and submitted to the County.

NOTE:

**LOAN DOCUMENT INFORMATION TO BE
PROVIDED FOLLOWING RECORDING OF
MORTGAGE**

Mortgage Document No: _____

Date Recorded: 10.5.11

Book Number: 27848

Page Number: 4256

County: MIAMI-DADE
State: FLORIDA

cb